

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States of America,
Plaintiff;

v.

Heriberto Latigo, Jr.,
Defendant.

Crim. No. 15-295

**Defendant's motion to return iPhone
illegally seized at the time of his arrest**

Under Federal Rule of Criminal Procedure 41(g), Defendant, Heriberto Latigo, Jr., moves for an order directing the government to return the iPhone it seized at the time of his arrest.

Facts

The FBI obtained an arrest warrant and went to arrest Latigo at his home. When the FBI entered the home, they observed Latigo holding his Iphone. They arrested Latigo and seized the phone. The government has not sought a search warrant for the phone.

Arguments and Authorities

Federal Rule of Criminal Procedure 41(g) provides:

A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

Fed. R. Crim. P. 41.

Law Enforcement may not seize personal property without a warrant. *United States v. Place*, 462 U.S. 696, 701 (1983) And an arrest warrant does not permit the officers executing the warrant to conduct a general search. *Chimel v California*, 395 U.S. 752, 763-64 (1969).

Had the FBI desired to search or seize the electronic devices in Latigo's home during the execution of the arrest warrant, then the agents could have obtained a warrant before they entered the home. They chose not to. Moreover, the government has never sought a warrant to search the phone. The defense therefore seeks the return of the iPhone.

Respectfully submitted,

/s/ F. Andino Reynal

F. Andino Reynal

Texas Bar No. 24060482

917 Franklin St., Suite 600

Houston, Texas 77002

Phone: (832) 427-2711

ATTORNEY FOR HERIBERTO LATIGO

Certificate of Service

I certify that a true copy of this motion was served on opposing counsel by the Court's electronic filing system.

F. Andino Reynal

Certificate of Conference

I certify that I have conferred with opposing counsel and that opposing counsel is opposed to this motion.

F. Andino Reynal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States of America,
Plaintiff;

v.

Heriberto Latigo, Jr.,
Defendant.

Crim. No. 15-295

**Order on Defendant's motion to return
iPhone illegally seized at the time of
his arrest**

The Court ORDERS that Heriberto Latigo's motion to return iPhone illegally seized at the time of his arrest is GRANTED.

Signed this ____ day of _____, 2016.

Kenneth Hoyt
U.S. DISTRICT COURT JUDGE